

In the Court of Appeals of the State of Alaska

Andrew Dennis Johnson,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13286**

Order

Review of Clerk's Intention to Enter
Judgment for Costs of Appointed
Attorney

Date of Order: **June 20, 2022**

Trial Court Case No. **3AN-15-04765CI**

A contract attorney for the Alaska Public Defender Agency proceeded with an appeal of a post-conviction relief application involving a challenge to a parole board decision even though the Agency had lost touch with the client, Andrew Dennis Johnson, and did not know whether Johnson, who was now out of custody, wanted to go forward with the appeal. This Court subsequently affirmed the superior court's dismissal of the post-conviction relief application in an unpublished memorandum decision. *See Johnson v. State*, Memorandum Opinion No. 6999 (Alaska App. April 6, 2022).

Following the issuance of the decision, the Appellate Court Clerk's Office notified Johnson that it intended to enter judgment against him in the amount of \$1,500.00 for the cost of appointed counsel. *See Alaska Appellate Rule 209(b)(6)* (requiring the Clerk of the Appellate Court to "enter judgment against the defendant for the cost of appointed appellate counsel unless the defendant's conviction was reversed by the appellate court"). Johnson objected to imposition of the cost of counsel judgment on the ground that he was unaware of the appeal and he had not authorized the attorney to proceed with the appeal. *See Alaska Appellate Rule 503(h)(2)(A)*. Johnson's motion was supported by his own affidavit and an affidavit by the contract attorney, who acknowledged that he had been unable to reach Johnson telephonically because the

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number no longer worked. The contract attorney also acknowledged that a letter had been sent to Johnson's address asking if he wanted to proceed with the appeal but no response had been received. The contract attorney indicated that he spoke with his colleagues at the Agency and decided to nevertheless go forward with the appeal because he believed Johnson had colorable issues. He further indicated that, after the Court's decision was issued, he was able to get in touch with Johnson who told him that he had never received the letter and he would have told him at the time that he did not want to pursue the appeal because he did not see how it could help him now that he was out of custody.


Based on the affidavits and the explanations provided by both Johnson and his court-appointed counsel,

IT IS ORDERED:

The Appellate Court Clerk's decision to enter a \$1,500.00 judgment against Johnson for the cost of counsel under Appellate Rule 209(b) is **REVERSED**. A judgment for the cost of appointed counsel's work in preparing this appeal will not be entered against Johnson.

Entered at the direction of Chief Judge Allard.

Clerk of the Appellate Courts



Ryan Montgomery-Sythe,
Chief Deputy Clerk

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Distribution:

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